IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No. 70 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF WEALTH-TAX - Applicant(s)
Versus
PARULBEN MADANMOHAN - Respondent(s)

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Appearance :
MR MANISH R BHATT for Applicant(s) : 1,
NOTICE SERVED for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE M.R. SHAH

Date : 17/07/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

Mrs. Bhatt, learned counsel for the Revenue. None for the respondent though the office report shows that the respondent is served.

2. At the instance of the Revenue, the Income Tax Appellate Tribunal has referred the following question for our answer;

> “Whether the Appellate Tribunal is right in law and on facts in holding that the Commissioner of Wealth-tax was not entitled to invoke the provisions of Sec.25 (2) for directing the Assessing Officer to consider the initiation of penalty proceedings, when the said proceedings had not been initiated in the original assessment ?”

3. From the order passed by the Commissioner of Wealth Tax, it would appear that

placing reliance upon some judgments of other courts which are referring to the provisions of Income Tax Act, he came to the conclusion that the order of assessment deserve to be set aside as the particulars were inaccurate, and submission of such inaccurate particulars were attracting penalty under Section 18(1)(c), and the Wealth Tax Officer did not take into notice the said aspects into consideration.

4. In the matter of ***Commissioner of Income-Tax v. Parmanand M. Patel, [2005] 278 ITR 3 (Guj),*** the Division Bench of this Court has taken the view contrary to the one taken by Madhya Pradesh High Court. This Court has held that, under the Income Tax Act, assessment and penalty proceedings are distinct and separate. In that, the Income Tax Commissioner had no jurisdiction under Section 263 of the Income Tax Act to direct the Assessing Officer to consider initiation of penalty proceedings under Section 271(1)(a). The

provisions of Section 271 of the Income Tax Act and Section 18 of the Wealth Tax Act, so far as they relate to penalty, are pari materia. When the Division Bench of this Court in the income tax matter has observed that the revisional authority would have no jurisdiction to direct the Assessing Officer to initiate penalty proceedings, then the said logic would apply to a pari materia provision.

5. In view of the availability of judgment of our own High Court, it is not necessary to refer to any other Judgment. The Tribunal was absolutely justified in setting aside the order of the Commissioner of Wealth Tax so far as it related to initiation of the penalty proceedings and was also justified in observing that the present was not the fit case for levy of penalty under Section 18(1)(c), especially when the penalty proceedings were not initiated by the Assessing Officer. The Reference is answered

against the Revenue. No costs.

[R.S. Garg, J.]

[M.R. Shah, J.]

RMR.